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Current Topics.

Invasion: Status of Civilians.

IN amplification of his statement in the House of Lords on 4th February as to the status of civilians in case of invasion (see *ante*, p. 71), LORD MOTTISTONE stated on 24th March in the same place that he claimed that first of all it was the law of the land that nobody must be allowed to contract out of his duty to do his utmost to overcome the invader, and secondly that the failure to make that plain had caused great confusion of mind. His lordship quoted a passage from "Halsbury's Laws of England" (Hailsham edition), vol. 9, p. 85, as to the duty of a private citizen to endeavour to bring criminals to justice, to arrest, and if necessary to use arms if the delinquent is armed. His lordship gave instances of the sort of confusion which Government "stay put" advice had caused, and pointed to the valiant resistance of the Russians as an example of what could be done when the whole of the population was instructed to try to overcome the enemy. There was no retiring to prepared positions when invasion came. You had got to stand and fight. The DUKE OF SUTHERLAND spoke in support of LORD MOTTISTONE'S statement. VISCOUNT CRANBORNE, in reply, stated that the Government's plan was to mobilise, organise and allot tasks rather than to encourage unorganised resistance which would tend to hamper the defence of the country. VISCOUNT MAUGHAM spoke of the difference between a combatant and a non-combatant in international law and of art. 2 of the Hague Convention relating to the spontaneous taking up of arms, and pointed out that we were up against murderous ruffians who completely disregarded international law. After some further debate the Lord Chancellor said that what the private citizen ought to do in case of invasion was not, he thought, to be determined by scrutinising law books. It was absurd to suppose that the defence of this country could be improved by lecturing the ordinary citizen as to what is his legal right or duty. It was irrelevant to talk of the common law or international law in such a connection. "When there is the prospect," his lordship said, "of things happening that we know have happened in Holland, Belgium, Poland and France, it seems to me perfectly fantastic to discuss for a moment matters, as it is said "from the point of view of international law." LORD MOTTISTONE, in a short reply, said that one rejoiced to have heard the eloquent, robust and patriotic speech of the Lord Chancellor, as it had swept out of the way manifold misapprehensions. The Lord Chancellor's speech leaves no illusions as to the place of law in a fight for the preservation of life, and the country is indebted to LORD MOTTISTONE and others for raising the question so as to give the Lord Chancellor an opportunity to clear up all misapprehensions.

Landlord and Tenant (Requisitioned Land) Act.

ON the motion for the third reading of the Landlord and Tenant (Requisitioned Land) Bill in the House of Lords on 24th March, the Lord Chancellor referred to some amendments which he would ask the House to make after the third reading had been carried. He said that in cl. 2 he desired to leave out most of the clause and to substitute different words. The point was that cl. 2 made provision to protect a tenant's fixtures if he took advantage of the Bill and gave notice of disclaimer. Under the ordinary law a tenant might be entitled to remove what were called his fixtures, but he must do so during the currency of the lease. Once the lease had come to an end, generally speaking, he would not be entitled afterwards to visit the premises and take away things which would otherwise be removable. His lordship's attention had been called to the fact that really a provision of this kind was needed for other cases where the premises were requisitioned, and not only in cases where the tenant of the requisitioned premises gave notice of disclaimer. What was needed was a clause wider than cl. 2 in the Bill, and that was the effect of the new clause which he proposed to move. If the new clause was agreed to, the result would be that the title would be rather narrower than it ought to be, and it would be necessary to add the words "for the adjustment of the rights of the parties in such leases with respect to certain buildings and fixtures." His lordship added that he could give illustrations which, he thought, would satisfy everybody about the hardships that might be inflicted on tenants unless the further provision was made. On question the necessary amendments were agreed to, and the Bill was passed a third time and returned to the Commons. It received the Royal Assent on 26th March.

Regulation 2D.

IN the Commons on 26th March, Mr. W. ROBERTS raised the question of the Home Secretary's warning to the *Daily Mirror* and urged the Government not to continue to make use of reg. 2D of the Defence (General) Regulations, 1939, but to use reg. 2C, under which disregard of a warning could be investigated by the courts. Under reg. 2D the Home Secretary was judge and executioner in his own cause. In the course of the ensuing debate, Mr. ANEURIN BEVAN alleged that the Government was seeking to suppress its critics, while Mr. A. P. HERBERT said that if he were the Home Secretary he would call the bluff of his critics and put the proprietor or the editor of the offending newspaper in the dock and expose him to the risk of a sentence of seven years or a fine of £500. Then that, of course, would be described as monstrous. In his reply, the Home Secretary said that the Government had been scrupulous to submit themselves to the judgment of the House at the earliest possible moment. He said that reg. 2C would have been an ineffective instrument and would have involved a long and leisurely procedure. The Press were not superior to Parliamentary institutions. The Government and himself as Home Secretary would, subject to their responsibility to the House of Commons, take any action within their power against any newspaper which conducted itself in such a way as to promote opposition to the successful prosecution of the war. That was his duty and he would discharge it. The remarkable thing was that only one daily newspaper had been suppressed (*The Daily Worker*). Mr. MORRISON compared the articles published by the *Daily Mirror* with the propaganda that a Secret Fascist organisation might publish to undermine the country's morale. He could not say what the motive of the paper was, but its general line was consistent with Fascist propaganda. Whatever the intentions of the newspaper, the Government were not only entitled, but it was their duty, to act. Mr. HORE-BELISHA said that it was the duty of Parliament to be excessively vigilant in these matters. After further debate the House adjourned. It is necessary to emphasise that in war-time the executive powers of the Government are necessarily increased, and it would be more than unwise to place obstacles in the way of the due exercise of those powers. The only qualification of these powers is and must be the responsibility of Ministers to Parliament.

Work of the War Damage Commission.

THE Chairman of the War Damage Commission, Mr. A. M. TRUSTRAM EVE, K.C., gave some interesting facts and figures to the Press in a statement made on 25th March, the day before the first anniversary of the coming into operation of the War Damage Act, 1941. He said that in many thousands of cases, some, if not all, of the necessary work of repair had been done and it was up to the Commission to pay as quickly as it could in every case where the expenditure incurred was £5 or over. These the Commission called "live claims." Of all the live cases in the Commission's offices at the moment 60 per cent. had been passed for payment, and of these, 118,400 cheques had been paid since 1st January, 1942. While in the first week in January the Commission paid just under 8,000 cheques, they were now paying

15,000 cheques every week and the figures for the week ending 20th March were 16,402. Of all the claims, both live and dead, 80 per cent. had been put right through the machine. Mr. EVE paid a tribute to the work of the local authorities, to whom the Commission had returned many millions of pounds in respect of first-aid repairs. Claims for payment for work done were still coming in in thousands. An important difficulty of an external kind was that complaints were made that builders could not give credit to some owing either to the fact that there was delay of some months in repayment of their bills by the Commission or that builders could not be certain that claimants would pay over the money on receipt from the Commission. The latter point was met by the form of authority recognised by the Commission, directing the Commission to pay the money into the builders' hands, a method which had had considerable success. Such delay as had occurred was due to the bulk of the cases, which was not falling off, and the restrictions of the numbers of technical staff. Everything possible was being done to expedite payment. One problem to which Mr. EVE referred arose out of s. 8 (3) of the War Damage Act, 1941, under which the Commission was empowered to make advances up to £800 on value payments to secure the provision of an alternative home or business premises. Under s. 8 (4), the amount of the advance must not be so great as to prejudice the rights of any other person concerned, e.g., a mortgagee, and the Commission interpreted that to mean that they were not allowed to advance more than the difference between the ultimate value payment and the amount due on the mortgage debt. Considerable disappointment was therefore caused where the property was mortgaged up to the hilt, but the Commission hoped to be able to do something to get round the difficulty. Mr. EVE also announced the publication of a booklet, called "Practice Notes," which is the subject of an article at p. 95 of this issue. There was something inspiring, he concluded, in the thought that the scars inflicted on the homes of the people of Britain were being healed with increasing rapidity. The operation of the War Damage Act had done much to assist the work, and the Commission, with a year's experience behind them, were determined to do very much more.

Local Authorities and the Press.

THAT the Government is concerned for the maintenance of the freedom of the Press was recently made apparent in a circular issued by the Minister of Health to local authorities relating to the situation arising as a result of the Court of Appeal's decision in *De Buse and Others* v. *McCarty and Stepney Borough Council*, 85 SOL. J. 468. It will be recalled that on 28th January the Minister received a deputation from the Institute of Journalists to request his co-operation to remove or ameliorate the disabilities from which Press and public alike are suffering because of the varying interpretation of existing legislation governing the admission of the Press to meetings of local authorities. The circular states that representations have been made to the Minister as to the possible effect of the recent Court of Appeal decision on the practice of local authorities in regard to supplying the Press with information in the form of committee reports or otherwise in advance of council meetings. The Minister affirmed his confidence that local authorities would appreciate the desirability, on the broadest grounds, of avoiding any withdrawal or restriction of facilities hitherto afforded to the Press, except in cases where this is necessary under present conditions for reasons of national security. Subject to this and to proper precautions against the publication of potentially defamatory matter, the Minister trusted that local authorities would be willing to continue their former practice. Representations were made, the circular continues, that arrangements in force in some areas for facilitating business under present conditions by delegation to an emergency committee operate to limit the publicity given to proceedings which, in the interests of local government, they should receive. The Minister fully recognises, it is stated, that on grounds of national security and for the sake of expedition, such arrangements may in some cases be necessary in present circumstances for transactions of part of the council's business. Otherwise, matters of public interest in the sphere of ordinary local government should, as far as possible, continue to be debated in open session of the council, and further, where for administrative convenience matters of that kind were finally dealt with by the emergency committee, the question of admitting the Press to the committee's proceedings demands careful consideration. These exhortations are all to the good, as far as they go, but the fact that local authorities can and do legally order secret committee meetings under s. 75 and para. 4 of Pt. V of Sched. III of the Local Government Act, 1933, does not result from any temporary emergency law, and therefore a change in the general law is required if the reality of democracy is to be preserved in local government not only now but after the emergency has disappeared.

Fun Fairs.

"A MAGISTRATE" writes to *The Times* of 17th March asking why fun fairs exist and why the police bring so few prosecutions. Both under the Gaming Act, 1845, and the Betting Act, 1853, he writes, there can be prosecutions. Under the latter Act there can be no defence that a game of skill took place. Courts can order the destruction of gaming machines. The possible penalties are heavy. In the words of LORD HEWART: "The law is perfectly clear. It depends only upon the vigilance and diligence of the police to put an end to what can only be regarded as a pest" (*R.* v. *Kirby* (1927), 20 Cr. App. Rep. 12). Under s. 2 of the Gaming Act, 1853, offices, rooms, houses or places used for the purpose of gaming or betting with persons resorting thereto are to be deemed common gaming houses within s. 3 of the Gaming Act, 1845, and consequently the police may obtain warrants to enter, by force if necessary, to arrest persons within and search them. Under s. 4 of the Gaming Act, 1854, heavy penalties can be imposed on the owner or occupier of a house, room or place which he opens, keeps or uses for the purpose of unlawful gaming or if he knowingly and wilfully permits this. Persons managing the premises are also liable. There is ample authority to the effect that such games as Corinthian bagatelle and cran machines, which involve little skill and much chance, are illega Similar machines have been condemned over and over again (se *Fielding* v. *Turner* [1902] 1 K.B. 867; *Roberts* v. *Harriso* 101 L.T. 540; *Pessers* v. *Catt*, 77 J.P. 429). When the law h been so clearly defined and so completely unchallenged f nearly a century, it is frivolous to begin to argue, as a number associated proprietors of fun fairs did in a letter to the Press, that they give innocent relaxation to a deserving public. The activities of fun fairs are clearly condemned by the criminal law of the land, and controversy cannot be commenced on the ethics of the matter, but only on the question why the law is not more rigorously enforced.

Women Solicitors and National Service.

IN the February issue of *The Law Society's Gazette* was published some information which has been elicited by the Council from the Service Departments on the subject of utilising to the best advantage the legal qualifications of women in the services. In the W.R.N.S. there is no legal department, nor is there any branch of the service in which legal qualifications as such are required, but as a legal qualification is an asset which indicates a highly trained mind, it is always in demand. Such qualifications might be useful in a Welfare Officer, provided that they are accompanied by previous experience of welfare work and also of general administrative duties. Officer W.R.N.S. are promoted from the ranks, but there is a method of accelerated promotion for women with outstanding qualifications and experience. Women solicitors and articled clerks interested in this scheme should inquire of the Secretary of The Law Society. In the A.T.S., while there is at the moment no appointment for which purely legal qualifications are required, legal training could be of the greatest value to officers commanding A.T.S. units, particularly so now that the A.T.S. has been brought under military law. A limited number of civilian women with administrative experience between the ages of twenty-seven and forty years are at present being accepted for registration in the A.T.S. section of the Army Officers' Reserve. The Secretary of The Law Society has been invited to forward for consideration the names of any suitable candidates for such appointments. In the W.A.A.F. there is at present no particular branch in which legal qualifications could be used to advantage, as there is no legal department. There are administrative airwomen and officers who deal with a variety of domestic problems where legal knowledge might be used to a limited extent. Direct entry for commissioned rank is only granted to certain women who possess scientific degrees and are suitable for employment on radiolocation and meteorology.

Recent Decisions.

In *Gifford* v. *Whittaker*, on 17th March (*The Times*, 18th March), the Divisional Court (the Lord Chief Justice, HUMPHREYS and SINGLETON, JJ.) held that the driver of a motor lorry, the load on which was so secured that danger was likely to be caused to persons on the road, contrary to reg. 67 (2) of the Motor Vehicles (Construction and Use) Regulations, 1937, was a person "using" the vehicle, and therefore liable to conviction under reg. 94 of those regulations.

In *Westminster Bank, Ltd., and Another* v. *Edwards and Another* on 24th March (*The Times*, 25th March), the House of Lords (The Lord Chancellor, LORD ATKIN, LORD WRIGHT, LORD ROMER and LORD PORTER) held that there was no sufficient material before the Court of Appeal to hold that a lease was not a multiple lease where the parties had agreed that the lease was a multiple lease and the county court judge, after inspecting the premises, had included among his findings an express decision to that effect.

In *Humphreys* v. *Tyler* on 26th March (*The Times*, 27th March), a Divisional Court (The Lord Chief Justice, HUMPHREYS and SINGLETON, JJ.) held that a billeting notice served by a police constable was properly served as the constable was expressly authorised by the billeting officer to serve it. It could not have been the intention of reg. 22 that the billeting officer and no one else should serve the notices, and there was also no reason why he should be present when they were served.

War Damage Practice.

WHAT appears at first sight to be a minor revolution in law-making has been attempted by the War Damage Commission in publishing on 25th March a booklet entitled "Practice Notes. (First Series.)" (H.M. Stationery Office, price 6d.) In announcing its publication, the Chairman of the Commission stated that it was primarily intended for lawyers, architects, surveyors and other professional people, and for builders, and its publication might be regarded in some quarters as an innovation. In it the Commission state the decisions arrived at on some of the more difficult provisions of the War Damage Act, 1941, and the manner in which they propose, in general, to exercise their discretions and carry out their administration.

In the preface it is pointed out that the Commission is given a semi-judicial status, but appeals on valuation go to one of a panel of referees, and on certain questions of law to the court. In issuing the "Notes," the Commission does not overlook the statutory obligation to determine each case on its own facts. In practice, the claimant will have the advantage of knowing that his claim will be dealt with in accordance with the "Notes," unless he either makes representations to the contrary, showing good cause for a different treatment, or he is informed by the Commission that for special reasons the normal rule is not to apply to his case. That this is not actually law-making is apparent from the analogy of the Highway Code, which has not the force of law, but breach shifts the onus of proof on to the person infringing it.

The book contains thirty pages divided under twenty-five sectional headings and two short appendices. Under the heading "Definition of 'Land'—Section 95 (1)," it is interesting to note that bushes, plants, bulbs and turf are land, except in the case of a nurseryman's stock of trees, bushes and plants intended for sale, while crops of grass for hay or pasture and the flowers on a plant are crops, and excluded from the definition of "land." As to the meaning of "plant," the "Notes" distinguish between permanent supports on which machinery is fixed, which are land, and special stagings for particular pieces of plant, which are plant. Reservoirs and wharves are examples of "land," while movable hen-houses and movable garden frames are neither buildings nor land.

An important question for all purposes of payment, and especially for determining the proportion of contribution paid by mortgagees (s. 25) is the method of determining what is the unit for both developed and undeveloped hereditaments (s. 2). The Commission announces that it proposes to treat as the minimum size of a developed hereditament the entity which comprises (1) all buildings other than "accessory" buildings in a single (fee simple) ownership which (*a*) might be expected ordinarily to be occupied together, and (*b*) are so situated that war damage to one or more of the buildings would be likely to affect substantially the value (including the value of user to the owner) of any other of the buildings; and (2) such other land and "accessory" buildings as fulfil the two tests in the proviso to s. 2 (3) (*a*). Where, however, there is multiple occupation or multiple ownership in a single building, that building will be taken as the unit (e.g., flats and offices). In practice, the rules will, in the great majority of cases, produce the unit taken for rating purposes as the unit for war damage purposes. Farmhouses and cottages will be treated as separate units, and each field on a farm or agricultural holding will be a separate unit, including non-essential buildings on the field.

The booklet includes some rulings which the Commission had previously announced. For example, in s. 3 (5), which deals with the notional sale on 31st March, 1939, for the purpose of ascertaining the value of a hereditament at any time, as the sale of the property with vacant possession is subject to the restrictions and encumbrances existing "at that time," those latter words must be interpreted to mean "just before or just after the occurrence of the damage respectively."

Another valuable practice note concerns the rule under s. 9 (7) that an assignment of the right to receive a payment under Pt. I of the War Damage Act, other than an assignment which does not affect any beneficial interest in the payment, shall be of no effect until it has been approved in writing by the Commission. The "Notes" state that the Commission, in exercising its discretion, will try (*a*) to ensure that the provisions regarding the date of payment of money (particularly value payments) should not be circumvented by claimants assigning their claims as collateral security for current loans, and (*b*) to prevent speculation in damaged properties and the exploitation of claimants. The Commission will not normally approve an assignment of the right to receive a value payment if it will have the effect of divorcing the value payment from ownership (freehold or leasehold) of the property. Applications for the approval of assignments must be accompanied by a full account of the transaction and of the reasons why the seller is selling and the purchaser is purchasing the damaged property. In particular, information should be given as to whether the parties were in a contractual or fiduciary relationship and also of any action taken under the Landlord and Tenant (War Damage) Acts.

Although it is an innovation for a judicial body to indicate beforehand the lines on which it proposes to decide cases, it must be remembered that the War Damage Commission is administrative as well as judicial, and that the infinite variety and complexity of its problems as well as the necessity for public confidence in the fairness and certainty of the administration of what is primarily a war-time task, demonstrate the wisdom and propriety of the Chairman's decision to publish the "Notes."

A Conveyancer's Diary.

Tax Free Annuities.

ARISING out of my recent discussion of *Re Skinner* [1942] Ch. 82, certain interesting points have been raised by a correspondent. It will be recalled that in *Re Skinner*, Morton, J., propounded certain rules for the guidance of "testators, executors and trustees," many of whom, he said, "seem to be very uncertain as to what amounts to a sufficient direction for payment of an annuity free of income tax." Those rules were (1) that an annuity payable out of the income of an estate is not free of income tax "unless there is a direction to that effect in the will"; (2) that the fact that the income of the estate has itself had tax deducted at source makes no difference; (3) that to use the words "a clear annuity" is not sufficient to free an annuity of income tax; (4) that "free of all deductions" is also not a sufficient direction. The learned judge ended by saying that "in view of the line of authorities referred to in" one of the cases which he cited for his fourth proposition, "it is to be hoped that, in future, if a testator desires to free an annuitant from the payment of income tax, he will use the words 'free of income tax,' and, if he does not desire the words 'income tax' to include sur-tax, will add the words 'but not free of sur-tax' (see *In re Reckitt* [1932] 2 Ch. 144)."

It will be seen that all the observations of the learned judge are directed to the point that a testator must make his intention abundantly clear if his bounty is to be free of income tax. He was not considering the effect as between the interested parties of the various forms of words which can be used to free annuities of liability to income tax. My correspondent says that "with great respect, I would venture the suggestion that, wherever possible, the testamentary gift should read 'an annuity of such a sum as after deduction of income tax at the current rate will amount to £*x*.'" He points out that this wording "will avoid the troublesome complications arising under the rule in *Re Pettit* [1922] 2 Ch. 765." It was held in that case that, since deduction at source of the standard rate of tax on an annuity is a mere piece of machinery, and that a man's real liability to income tax is only ascertained after allowing for the various reliefs, the testator's estate, having already given the annuitant his tax-free annuity, is entitled to have back the reliefs recovered in respect of that annuity. Were that not so the annuitant would not be getting a spendable annual sum of £*x*, but a spendable annual sum of £*x* plus a further sum recovered from the Revenue. This reasoning has lately been endorsed by the Court of Appeal in *Re Maclennan* [1939] Ch. 750, where the expression used was "the annual sum of £500 clear of all deductions for income tax but not sur-tax." And in *Re Kingcome* [1936] Ch. 566, it was held that where the rule in *Re Pettit* applies the annuitant is in the position of holding the statutory right to recover the due reliefs as trustee for the estate, and is bound at the request of the trustees to sign the necessary application form.

My correspondent is evidently of the opinion that to apply the rule in *Re Pettit* involves "troublesome complications," and he suggests that a better course would be to follow the wording used in *Re Jones* [1933] Ch. 842, where a different result arose. In *Re Jones* the words were "such an annuity as after deducting income tax therefrom at the current rate for the time being would amount to the clear yearly sum of £350." Eve, J., held that "current rate" means "current standard rate," and that the effect of these words was that "the trustees will by deduction from the sum set aside each year pay on behalf of the annuitant the tax payable in respect thereof, and if the annuitant succeeds in recovering any part of the tax paid it will belong to her just as it would do in the case of an annuity not bequeathed free of tax." In other words, the result of using these words was to give the annuitant not an annual spendable sum of £350, but of £350 plus what she could get back from the Revenue. Of course, I agree with my correspondent that if the form of words used in *Re Jones* is employed the will trustees and their solicitors are saved a certain amount of trouble. But I do not think that the trustees are really likely to be much worried by the working out of points of this sort and their solicitors are, after all, remunerated for their labours.

The real point, surely, is which of these two possible results the testator intends to bring about, and that is a matter on which one cannot generalise. I think that the draftsman's duty is to explain the point and to ask for instructions. But, though one cannot speak for testators in general, one can be reasonably sure what one would mean oneself in giving instructions for the creation of an annuity of £100 free of tax. I should personally mean that the annuitant was to have £100 to spend after settling

with the inspector and collector of taxes, not that he was to have for spending £100 and anything else that could be extracted from the Exchequer in respect of the annuity. And that would mean that I should wish the draftsman to use the words used in *Re Pettit* and not those of *Re Jones*.

My correspondent ends by referring to the passage where Morton, J., said in *Re Skinner* that if an annuity given free of income tax was not also to be free of sur-tax the draftsman should say so expressly, the point being, of course, that sur-tax is only a special sort of income tax and is thus comprised in the words "income tax." My correspondent asks how an annuity which is merely given "free of income tax" (and so is free of both income tax and sur-tax) is "to be dealt with under s. 25 of the Finance Act, 1941 (reduction of net annuity where standard rate of tax is 10s. in the £)." I have referred to that section, and should point out that it is clear from subs. (1) that s. 25 only applies to "annuities which were created by an instrument made before 3rd September, 1939, which has not been varied since that date." Subsection (2) deals with the position of annuities free of both income tax and sur-tax. I do not pretend to have any idea what it means, and I therefore set it out *in extenso*: "Where such a provision as is mentioned in subsection (1) of this section is a provision for a payment free of income tax (and not merely a provision for a payment free of income tax other than sur-tax) the sum, if any, to be paid under that provision to make good the requirement that the payment shall be free of sur-tax shall, in the case of sur-tax for the year preceding any such year of assessment as is mentioned in the said subsection (1), be reduced to twenty twenty-ninths of the sum which would have been sufficient for that purpose if the rates of sur-tax in force for the year 1937–38 had applied to the year for which sur-tax is payable." Enactments like this are a mere jumble of syllables over which the mind passes and receives no impression.

Landlord and Tenant Notebook.

Stating reasons for Notice to Quit under Agricultural Holdings Act, 1923, s. 12.

WHEN in the course of an arbitration under the Agricultural Holdings Act, 1923, the arbitrator is requested, under Sched. II, 10, to state a case for the opinion of the local county court, it is not uncommon for requests to follow for including several other points for judicial deliberation. Consequently, not all the matters gone into by the learned county court judge in *Sharpley* v. *Nainby-Manby*, at Grimsby County Court, and set out in our "County Court Letter" of 21st March (86 SOL. J. 83), were equally difficult to decide. They were, however, mostly questions on the interpretation of subs. (1) of s. 12 of the Act, the "security of tenure" section, conferring, in effect, a right to compensation for disturbance on good tenants. Study of such questions is always worth while.

The subsection begins by declaring the right and at once qualifies it. The scheme is this: a tenant is to be entitled to compensation "unless"—and the conditions resolutive are of two kinds. One concerns his conduct, the other his knowledge of what is complained of. "Where the tenancy of a holding terminates by reason of a notice to quit given by the landlord, and in consequence of such notice the tenant quits the holding, then, unless the tenant . . ." and six separate conditions or classes of conditions, arranged in paras. (*a*) to (*f*), follow before the subsection proceeds: ". . . and unless the notice to quit states that it is given for one or more of the reasons aforesaid, compensation for the disturbance shall be payable." (There is a curious provision in a much later subsection, subs. (9), entitling a tenant who receives a notice not stating reasons to require them, in writing; the landlord to give them, in writing, within twenty-eight days, failing which compensation is payable as if no reason had been given, provided the failure be unreasonable. The occasion certainly seems to be one for the suppression, rather than expression, of any curiosity.)

The most important of the reasons are those in the first three paragraphs referred to above: (*a*) that the tenant was not at the date of the notice cultivating the holding according to the rules of good husbandry; (*b*) had, at the date of the notice, failed to comply within a reasonable time with any notice in writing by the landlord served on him requiring him to pay any rent due in respect of the holding or to remedy any breach, being a breach which was capable of being remedied, of any term or condition of the tenancy consistent with good husbandry; (*c*) had, at the date of the notice, materially prejudiced the interests of the landlord by committing a breach which was not capable of being remedied of any term or condition of the tenancy consistent with good husbandry.

Now it appears that the landlord in *Sharpley* v. *Nainby-Manby* had alluded to what would be statutory reasons rather than stating that his notice was given for statutory reasons. He mentioned that the tenant had failed to pay his rent upon the due date; that he had failed to destroy noxious weeds; that he had failed to cut thistles in grass land; and that he had failed to maintain the exterior of the farm in good order and condition. The first point submitted to the county court was whether the landlord had brought himself within the words "the notice states that it is given for one or more of the reasons aforesaid"; on this, the learned judge held that the actual words need not be followed, and it would suffice if the reason were indicated with adequate clearness. This decision is reminiscent of the recent Landlord and Tenant (War Damage) Act authority of *Black* v. *Milcham* (1941), 3 All E.R. 269 (see the "Notebook," 85 SOL. J. 424 and 86 SOL. J. 59), in which a tenant was held to have elected to disclaim by writing a letter which never mentioned election, disclaimer, or the Act, or any section thereof.

The above was not conclusive of the question (which followed) whether sufficient reason was in fact indicated, and His Honour was next called upon to consider whether the statement about weeds and thistles satisfied para. (*b*), *supra*. Presumably the learned judge was guided by the somewhat comprehensive definition of the rules of "good husbandry" in the interpretation section, s. 57, when deciding this point in favour of the landlord the first rule mentioned there commences with "the maintenance of the land . . . clean . . ." (It may be remembered that the 1908 Act did not enumerate or classify reasons: the test was without good and sufficient cause and reasons inconsistent with good estate management.) The question whether any breaches had in fact been committed was, of course, not for the county court. But the paragraph demands, as has been seen, that the tenant shall have failed to comply with a written notice requiring him to remedy the breach, and what the landlord relied on to satisfy this requirement was a number of letters which, it was held, merely expressed hopes, or made suggestions, and did not bring home to the tenant the consequences of non-compliance or indicate that he would lose statutory privileges if he did not comply. Construction of documents being a question of law, this answer settled that question in favour of the tenant.

The landlord would still be able to invoke the non-payment of rent, and another question put to the court was whether an invitation to attend a rent audit "between 11.30 a.m. and 1 p.m." constituted "a notice in writing requiring him to pay any rent due in respect of the holding." This was answered in the landlord's favour; the landlord would, it was held to mean, be pleased to receive the rent at that or any other time. One might make the comment that the request was somewhat euphemistically expressed; but the recipient must be credited with knowledge of human nature if not of the principle of our law by which a debtor must seek out his creditor. Incidentally, there is reason to suppose that this farm was an old-established estate, for our report mentions that the notice to quit expired on a 6th April—Old Lady Day.

But for the fact that the court answered the remaining question whether service by ordinary post sufficed, in favour of the tenant, the landlord would consequently have succeeded, having established "*one* or more reasons." The learned judge's interpretation of s. 53, which deals with service, has, however, since been rejected by the Court of Appeal; and this point will be dealt with in a later "Notebook."

Our County Court Letter.

Administration of Estate of Intestate.

IN a recent case at Birmingham County Court (*Watson* v. *Watson*), the plaintiff's case was that he and the defendant (his brother) were the sole surviving next-of-kin of their mother, Florence Watson. The latter had died on the 2nd January, 1941, intestate, and letters of administration had been granted to her estate in March, 1941, to the defendant. Although the defendant was not bound to distribute the estate of the deceased before the expiration of one year from the death (under the Administration of Estates Act, 1925, s. 44), this period had in fact elapsed and the defendant had done nothing. The plaintiff produced a sealed duplicate of the letters of administration, showing the value of the estate as £405. The principal asset was the intestate's leasehold residence, which had been unoccupied (although furnished) for a year. Liabilities were thus accumulating for ground rent and rates, and the furniture was deteriorating by reason of damp and the absence of fires. The defendant's explanation, in correspondence with the plaintiff's solicitors, was that he had been prevented by illness from attending to business. His Honour Judge Dale made an order for general administration, and for the appointment of the plaintiff's nominee, an incorporated accountant, as receiver—subject to an affidavit of fitness to the satisfaction of the registrar. The question of the sale of the house was referred to chambers, together with the costs, with liberty to apply. It is to be noted that, if no order is made impounding the grant of letters of administration, the order of the court should be registered as a *lis pendens* under the Land Charges Act, 1925. This will prevent any dealings with the estate by the administrator.

A notice in *The Times* of Tuesday, 24th March, recorded the death on 21st March, 1942, after a short illness, of Frederick Stephen Stanford, managing clerk to Messrs. Guillaume & Sons, solicitors, 1, Salisbury Square, London, E.C.4, and beloved friend of four generations of the firm.

To-day and Yesterday.

LEGAL CALENDAR.

30 March.—On the 30th March, 1732, " was held a Court of Honour at the College of Arms in Doctors Commons, in which Dr. Isham sat as judge attended by Blance Anstis, Esq., Garter King at Arms, and Knox Ward, Clarencieux King at Arms. The Court was moved against Sir John Blunt for bearing a coat of arms supposed not to belong to that family; also against Mr. Ladbrook's executor, for hanging up an atchievement and using ornaments at his funeral that did not belong to the said Mr. Ladbrook." The articles exhibited against the executor were subsequently admitted, but after the case against Sir John Blunt had dragged on till June it was found that the court could not proceed, as there had been a mistake in the citation.

31 March.—Right up to the reign of Charles II Roman Catholic priests were executed as traitors for their priesthood alone under the Statute of Elizabeth. One of the last victims of this law was Father John Kemble, who suffered at the age of eighty after a ministry of over fifty years in the West Country. He was tried before Mr. Justice Atkyns at the Hereford Assizes on the 31st March, 1679, and was condemned to death. He might have escaped arrest, but he said that as he had only a few years to live it would be an advantage to die for his religion. The charm of his manner won even his gaolers and his memory lingered long in the countryside where he had worked. The great John Kemble and his sister Sarah, better known as Mrs. Siddons, were of his kindred, and in 1805 they visited his grave, declared their pride in his martyrdom and left money for repairing his tombstone.

1 April.—Jack Withrington came from Blandford. His four brothers were hanged but he alone achieved the distinction of adorning Tyburn. After serving an apprenticeship to a Shaftesbury tanner he joined a cavalry regiment, took part in the suppression of Monmouth's rising and came to London, where he won a great reputation as a duelist. His military career ended abruptly when he challenged his captain and he then turned professional bully and gamester. But though money poured in it poured out faster, and after sinking to the level of a common cheat he bought arms and a good horse and took the road as a highwayman. He was hanged on the 1st April, 1691, for robbing a nobleman of over £300 on Hounslow Heath. He joked to the end and riding from Newgate in the cart he asked the sheriff's deputy to go round by Shoe Lane and Drury Lane as he owed a debt at the " Three Cups " in Holborn and feared he might be arrested for it if he passed the door.

2 April.—Mary Edmondson was something of a psychological case. The daughter of a Yorkshire farmer, she lived for two years with her aunt at Rotherhithe, always behaving well and attending church regularly. Then one night a passing oyster woman noticed the door open and heard her calling: " Help! Murder! They have killed my aunt!" The neighbours were alarmed and the old lady was found dead with her throat cut. Mary told an unlikely story of a tall man in black and three other strangers having come in at the back door and done the deed, but when some valuables which she said was missing were found under the privy floor suspicion fell on her and she was convicted of murder at the Kingston Assizes. At nine in the morning on the 2nd April, 1759, she was driven in a post-chaise to the " Peacock " in Kennington Lane where she drank a glass of wine. She then rode in a cart to the gallows on Kennington Common where she protested her innocence, declared she died with as much pleasure as if she were going to sleep, expressed forgiveness of her prosecutors and asked for the people's prayers.

3 April.—In 1689 John Chiesly, a disappointed litigant, shot Sir George Lockhart, Lord President of the Court of Session, dead in the streets of Edinburgh. He was condemned to be carried on a hurdle from the Tolbooth to the Market Cross on the 3rd April and there to have his right hand cut off and to be hanged on a gibbet with his pistol about his neck. His body was to be hung in chains between Edinburgh and Leith. Afterwards it was secretly brought to the family home at Dalry, where it was buried in the garden beneath a stone seat. Years afterwards the tradition persisted that he haunted the place. When alterations were made to the place a skeleton, entire but for the bones of the right hand, was dug up.

4 April.—The 4th April, 1746, was a busy day at Tyburn when seven men and three women were hanged there. Some of them had lain under sentence of death in Newgate since the previous September. Their crimes covered murder, highway robbery, theft, coining and embezzlement.

5 April.—On the 5th April, 1734, " the Assizes ended at Taunton, Somerset, when five prisoners were capitally convicted of various offences. Joseph Jacob Sherring, a Jew, found guilty of criminal conversation with the wife of Lazarus Chadwick, was fined £20, to suffer two years' imprisonment and to find sureties for his good behaviour seven years."

Mr. Edward Lee Rowcliffe, solicitor, of Bedford Row, W.C., left £84,308, with net personalty £20,208.

Notes of Cases.

CHANCERY DIVISION.

Lane *v.* Minister of War Transport.

Farwell, J. 16th March, 1942.

Emergency legislation—Requisitioning powers—Minister requisitions vehicle while in his possession under prior hiring agreement—Validity of requisition—Compensation (Defence) Act, 1939 (2 & 3 *Geo.* 6, *c.* 75), *s.* 17—*Emergency Powers (Defence) Act*, 1939 (2 & 3 *Geo.* 6, *c.* 62), *s.* 1—*Defence (General) Regulations*, 1939, *reg.* 53.

Adjourned summons.

The plaintiff, a haulage contractor, was the owner of a lorry. By an agreement of the 30th May, 1940, the defendant, the Minister of War Transport, in exercise of his powers, hired the lorry for a continuous period beginning on that date, at the rate of £1 a day. The agreement provided for the termination of the hiring at any time. By a notice of the 30th March, 1941, the defendant purported to requisition the vehicle which was still in his possession under the agreement for hire. By this summons the plaintiff sought a declaration that the defendant was not empowered by the Defence (General) Regulations, 1939, reg. 53, to requisition a vehicle which at all material times was in his possession. Regulation 53 provides that: " . . . a competent authority, if it appears to that authority to be necessary or expedient so to do in the interests of the public safety . . . may requisition (*a*) any chattel in the United Kingdom . . . and may give such directions as appear to the competent authority to be necessary or expedient in connection with the requisition." The Compensation (Defence) Act, 1939, s. 17, provides: " ' Requisition ' means in relation to any property, to take possession of the property, or require the property to be placed at the disposal of the requisitioning authority."

FARWELL, J., said it was contended that the Crown had no power to requisition a vehicle where the vehicle requisitioned was already in possession of the Crown under an existing agreement of hire. If the Crown's power to requisition was so limited, it must be limited either by something in the Act itself or in the Regulations. He was unable to see that there was anything which prevented the Crown from taking the step which it had taken. It was said that the hiring agreement was still in existence when the requisition notice was given, therefore the notice could not be a good notice, because it was a breach of the hiring agreement. What the position might be where the agreement contained some provision as to the length of notice required to determine it did not arise, as this agreement could be determined at any time. In his judgment the notice to requisition was in itself a sufficient notice to determine the hire agreement. The plaintiff was not entitled to the relief which he sought and the summons must be dismissed.

COUNSEL: *G. R. F. Morris; The Attorney-General* (Sir Donald Somervell, K.C.); and *Danckwerts*.

SOLICITORS: *Mawby, Barrie & Letts; Treasury Solicitor.*

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY.

Gatward *v.* Gatward.

The Right Hon. The President. 26th February, 1942.

Divorce—Wife's petition—Desertion for three years and upwards—Separation order with non-cohabitation clause—Variation of weekly amount at wife's instance—Non-cohabitation clause later erased at wife's instance—Motive to obtain divorce at end of three years—Not necessarily fatal—Further evidence advisable.

Wife's petition for divorce on the ground of desertion for three years immediately preceding the presentation of the petition.

The parties were married on 3rd July, 1926. A child was born to them in 1931, and thereafter the respondent neglected and later deserted his wife, who obtained an order for maintenance against him from the Epping justices on 18th December, 1931, on the grounds of desertion on 27th July, 1931, and wilful neglect to provide reasonable maintenance for her on and before 11th December, 1931. The order, which was for payment by the husband of 10s. a week, contained a clause that the wife be no longer bound to cohabit with the husband. On 22nd April, 1932, the order was varied at the wife's instance so as to increase the weekly payments to £1 10s. per week, but no attempt was made to strike out the non-cohabitation clause. The husband made irregular payments under the orders and no attempt was made to bring about a resumption of cohabitation. On 10th June, 1938, the Epping justices ordered, at the instance of the wife, that the non-cohabitation clause in the order of 18th December, 1931, " shall be no longer of effect and shall be from henceforth deleted from the said order." The wife said that she had tried hard to get her husband back before the original order, and if after that he had made overtures to her, she would have taken him back, but that by 1938 she had no intention of taking him back. The object of the wife in applying for the deletion of the non-cohabitation clause was so that in due course she might be enabled to obtain a divorce at the expiration of three years.

LORD MERRIMAN, P., said that he should find it difficult to hold, after a separation order had been in full force and effect for many years, and without any overtures on the wife's part towards a resumption of cohabitation, or any evidence of the husband's conduct to explain her not making any, that desertion, while again becoming possible, was automatically reconstituted by the mere deletion of a non-cohabitation clause from the order; more especially when the express object of the variation was not to facilitate a resumption of cohabitation but to enable the wife to obtain a divorce after the lapse of a further period of three years, a form of application which might tend rather to induce a husband to stay away in the hope of

obtaining his freedom than to resume cohabitation. His lordship referred to *Boulton* v. *Boulton* [1922] P. 229, in which desertion was held to be constituted by similar procedure, but no reasons were given for the decision, and distinguished *Mackenzie* v. *Mackenzie* [1940] P. 81. The mere fact that in a certain event, the wife in applying for a variation contemplated the reconstitution of desertion with a view to divorce was not of itself fatal. The wife took the risk of bringing about a state of things in which she might have been obliged to resume cohabitation: *Palmer* v. *Palmer* [1925] P. 180. But the husband had made no attempt to resume cohabitation and this, his lordship was prepared to hold, was not merely because the wife announced her hope of obtaining a divorce, but because there were very good reasons which debarred him from doing so. Therefore, although the case was near the line there would be a decree *nisi*. In his lordship's opinion a petitioner took a risk if she relied solely on such a variation of a separation order without evidence of other facts from which an inference of statutory desertion could be drawn.

COUNSEL: *H. Marshall Reynolds.*
SOLICITOR: *J. C. L. Sharman.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

COURT OF CRIMINAL APPEAL.

R. *v.* **Roberts.**

Humphreys, Wrottesley and Croom-Johnson, JJ.
16th January, 1942.

Criminal law—Murder—Issue of manslaughter withdrawn from jury—Misdirection—Substituted verdict.

Appeal against conviction.

The appellant was convicted before Singleton, J., at Winchester Assizes, of the murder by shooting on the 21st September, 1941, of Nina Eileen Wood, and sentenced to death. The appellant's defence was that after a quarrel with the girl he took a rifle to a house where she was in order to frighten her; that he jerked the rifle forward meaning to catch it at the point of balance for the "short trail" position; and that it went off. The evidence was that, the girl having decided to give up walking out with the appellant, he, being distressed, went on the 21st September to a house where the girl and others were, and spoke to her at the front door. A witness, who was with others in the dining-room, said that, hearing a shot, he went out into the passage, where he saw the girl in the act of falling down. The front door was shut, but through the glass panels he could see the appellant standing with the butt of his rifle at his hip. The main ground of appeal was that it was wrong in law for the judge to tell the jury that it was not open to them to return a verdict of manslaughter. He directed them that it was a case of murder or nothing, and that if they found the appellant not guilty of murder they must acquit him.

HUMPHREYS, J., giving the judgment of the court, said that there were a number of circumstances inconsistent with the defence of accident. There was ample evidence on which a jury on proper direction could convict the appellant of murder. Singleton, J., in the material part of his summing up had referred to the concession by the appellant's counsel that there was no question of provocation, but that the verdict might be manslaughter if the jury found some gross negligence on the part of the appellant proved. He had then clearly withdrawn the issue of manslaughter from the jury. The question whether that direction was right was not easy. The law was clear. If the jury found the facts proved which would constitute murder if there were in addition the malice which was an essential part of murder, but they negatived the malice, they might, as a general proposition, return a verdict of manslaughter. The matter was clearly expressed in *R.* v. *Hughes* (1857), 7 Cox C.C. 301, and see Archbold's "Criminal Pleading, Evidence and Practice," 30th ed. (1938), p. 902. The court saw no reason to doubt anything said in *R.* v. *Hughes, supra*, or the statement of the Lord Chief Justice that "what constitutes murder being by design and of malice prepense, constitutes manslaughter when arising from culpable negligence." *R.* v. *Weston* (1879), 14 Cox C.C. 346, a case of alleged self-defence, had also been cited for the appellant. The difficulty here was that the appellant was not at the trial asked any question about how the rifle came to be discharged. It was agreed that pulling the trigger, dropping it, or a heavy blow were the only things which would make it go off. Neither the second nor the third had happened. The trigger must therefore have been pulled, but the appellant was never asked whether his finger was on it. His case was that his finger, if on the trigger, was there unintentionally. On those facts a verdict of manslaughter was in the opinion of the court open to the jury as a matter of law. On the facts testified to on oath at the trial the jury might have found that the appellant was doing a highly dangerous act in loading the rifle, leaving the safety catch off and chucking up the weapon in the way which he had described, and that that negligence had caused the death. Notwithstanding that the judge's direction had been given in the appellant's interest, the latter was entitled to have the jury properly directed as a matter of law. The court was disposed to think that no reasonable jury could have reached the conclusion of manslaughter, but it could not delve into their minds and speculate on what they would have done if the issue had been left open to them. As had been said in *R.* v. *Prince* (1941), 58 T.L.R. 21, the direction being insufficient, the verdict of murder could not stand. The court would apply s. 5 (2) of the Criminal Appeal Act, which it thought much more appropriate to this case than it had been to *R.* v. *Prince, supra*, and substitute a verdict of manslaughter, with ten years' penal servitude.

COUNSEL: *Casswell*, K.C., and *Munro Kerr*; *Trapnell*, K.C., and *Platts Mills.*

SOLICITORS: *The Registrar of the Court of Criminal Appeal*; *The Director of Public Prosecutions.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Obituary.

CORPORAL J. T. BLACKER.

Corporal John Turton Blacker, of the Royal Corps of Signals, has died in the Middle East, aged thirty-six. He was admitted in 1929, and was a partner in the firm of Messrs. J. Eaton & Co., solicitors, of Market Street, Bradford.

MR. D. W. DOUTHWAITE.

Mr. Dennis William Douthwaite died on Friday, 27th March, aged seventy-one. For thirty-eight years he had been Under-Treasurer of Gray's Inn.

MR. A. E. B. SOULBY.

Mr. Arthur Edward Bromehead Soulby, solicitor, of Messrs. Soulby, Hall & Elston, solicitors, of Malton, Yorks, died on Friday, 20th March, aged seventy-eight. He was admitted in 1885, and was a former president of the Yorkshire Law Society.

Parliamentary News.

ROYAL ASSENT.

The following Bill received the Royal Assent on the 26th March:—
Landlord and Tenant (Requisitioned Land).

War Legislation.

STATUTORY RULES AND ORDERS, 1942.

E.P. 525. **Acquisition of Food** (Excessive Quantities) Order, March 19.
No. 529. **Aliens** (Movement Restriction) (No. 2) Order, March 19.
E.P. 507. **Defence** (Agriculture and Fisheries) Regs., 1939. Order in Council, March 19, adding Part XI.
E.P. 505. Defence (Companies) Regs., 1940. Order in Council, March 19, amending regs. 1 and 5.
E.P. 504. Defence (Finance) Regs. (Isle of Man), 1939. Order in Council, March 19, amending regs. 3c and 5.
E.P. 502. Defence (General) Regs., 1939. Order in Council, March 19, amending reg. 62B, revoking reg. 23BA and adding regs. 42CB. 54AB and 76A.
E.P. 506. Defence (Summer Time) Regs., 1939. Order in Council, March 19, amending reg. 2.
E.P. 503. Defence (Ulster Home Guard) Regs., 1942. Order in Council, March 19.
No. 455. **Export of Goods** (Control) (No. 13) Order, March 13.
No. 481. **Foreign Jurisdiction**. China (Japanese Military Occupation) Order in Council, March 5.
E.P. 480. **Limitation of Supplies** (Cloth and Apparel) Order, 1941. Direction, March 17, re Utility Cloth.
E.P. 468. Limitation of Supplies (Misc.) (No. 13) Order, 1941. Gen. Licence, March 13, re Fountain Pens.
No. 499. **National Health Insurance** (Arrears) Amendment Regs., March 7.
E.P. 466. **Railways** (Wagon Labels) Order, March 16.
E.P. 517. **Regulation of Traffic** (Formation of Queues) Order, March 16.
E.P. 494. **Retail Prices** (Notices) Order, March 17.
E.P. 531. **Sampling of Food** Order, March 21.

WAR DAMAGE COMMISSION.

Practice Notes. First Series. Being concise notes on certain matters arising out of the administration of Part I of the War Damage Act, 1941. March 26, 1942. 6d. net.

Notes and News.

Honours and Appointments.

The Lord Chancellor has appointed Mr. EDMUND WAITE to be the Registrar of Boston and Sleaford County Courts as from the 23rd March.

Notes.

The Legal & General Assurance Society, Ltd., and its associate companies applied during the London warship week for £1,000,000 3 per cent. Savings Bonds. Since the beginning of the war the Legal & General Assurance Society and its associate companies have subscribed to new war loans a total sum of over £10,000,000.

On Friday last, says *The Times*, the attention of solicitors was drawn to a practice rule of the Chancery Division that in affidavits and similar documents copied for the court dates, sums of money and other figures must be stated in numbers and not in words. In two recent cases where there had been a breach of that rule the judge gave an instruction to the taxing master to disallow the costs of the office copy of the affidavit.

Wills and Bequests.

Mr. William Walter Peacock, solicitor's managing clerk, of Lee, S.E., left £3,062, with net personalty £2,939.

Sir Reginald Ward Edward Lane Poole, K.C.V.O., solicitor, of Great Cumberland Place, W., left £56,162, with net personalty £50,873.